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JUL 27 2004

OFFICE OF PETITIONS

In re Application of
Bennet et al.
Application No. 09/664,085
Filed: September 18, 2000
Attorney Docket No. Q858-E

ON PETITION

This decision concerns the June 7, 2004 petition under 37 CFR 1.137(b).

The petition is **DISMISSED**.

On November 12, 2003, a final Office action was mailed, setting forth a 3-month shortened statutory reply period.

As indicated in a March 10, 2004 Advisory Action, the February 12, 2004 proposed amendment did not place the application in condition for allowance, and was not entered. A second proposed amendment, filed on April 12, 2004 along with a request for a 2-month extension of time and the extension-of-time fee, also did not place the application in condition for allowance and was not entered by the Examiner as stated in the May 3, 2004 Advisory Action. No further correspondence was filed on or before May 12, 2004. The application became abandoned on May 13, 2004.

The instant petition requests revival of the application under 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(b), in the instant case, must be accompanied by: (1) **the required reply to the November 12, 2003 final Office Action**, unless previously filed;¹ (2) the \$665 petition fee (small entity); and (3) a statement that the entire delay in filing the required reply from its due date until the filing of a grantable § 1.137(b) petition was unintentional.

The proposed amendment enclosed with the petition, as pointed out in the attached courtesy copy of Advisory Action, again does not place the application in condition for allowance and was rejected by the Examiner. The petition is thus dismissed.

As authorized, the \$665 petition fee has been charged to a credit card.

¹ A required reply to a final Office action, in the instant case, must be: a notice of appeal; an amendment that *prima facie* places the application in condition for allowance; the filing of a Request for Continued Examination (RCE) along with an RCE submission and the RCE filing fee, both required by 37 CFR 1.114; or the filing of a continuing application under 37 CFR 1.53(b). MPEP 711.03(c)(III)(A)(2)(b) (Rev. 2, May 2004).

A renewed §1.137(b) petition must comply with the requirements discussed above and be filed within **TWO MONTHS** of the mailing date of this decision, and should be addressed to:

Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Extensions of time under 37 CFR 1.136(a) are available.

Telephone inquiries on this decision should be directed to the undersigned at (703) 308-0763.

A handwritten signature in black ink, appearing to be 'RC Tang', is written over the printed name.

RC Tang
Petitions Attorney
Office of Petitions

Attachment: Advisory Action (July 23, 2004; courtesy copy)

July 23, 2004

Advisory Action	Application No. 09/664,085	Applicant(s) BENNETT ET AL.	
	Examiner Doug Hutton	Art Unit 2178	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: The proposed amendment creates a 112 problem for Claim 44 in that the claim is dependent upon cancelled Claims 42 and 43.